



SETON HALL | **LAW**

Center for Social Justice

833 McCarter Highway, Newark, New Jersey 07102-5210  
Tel. (973) 642-8700 • Fax (973) 642-5939/8295

Bassina Farbenblum  
Practitioner in Residence  
International Human Rights/Rule of Law Project  
(973) 642 8700 (t)  
(973) 642 8295 (f)  
farbenba@shu.edu

FOIA Officer  
ICE Field Office  
26 Federal Plaza, Rm. 1104  
New York, NY 10278

December 13, 2007

**Re: Freedom of Information Act Request/ Expedited Processing Requested.**

Dear Madam/Sir:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), 6 C.F.R. § 5 (Department of Homeland Security FOIA regulations) and 8 C.F.R. §103.10 (Department of Homeland Security immigration FOIA regulations).

This request is submitted by Seton Hall School of Law's Center for Social Justice ("the Center"), and the Brazilian Voice newspaper.

We are filing this request concurrently with Department of Homeland Security Headquarters and Privacy Office, U.S. Citizenship & Immigration Services, ICE Headquarters, ICE Field Office (Newark, NJ), Fugitive Operations Support Center (C/O ICE Headquarters), Compliance Enforcement Division (Washington, DC; C/O ICE Headquarters), Office of Detention and Removal Operations (Washington, DC), Office of Detention and Removal Operations (Newark, NJ), Office of Investigations (Washington, DC), Office of Investigations (Newark, NJ), New York Intelligence Office, National Fugitive Operations Program (Washington, DC; C/O ICE Headquarters), New Jersey Fugitive Operations Teams (C/O ICE Headquarters) and Federal Law Enforcement Training Center.

**A. Requesters**

Massachusetts and Pennsylvania. Established in 1988, it reports on a wide range of current events and issues of interest to the Brazilian community, including issues and events related to immigration enforcement. Its Saturday edition reports specifically on issues and current events of interest to the Brazilian community in New Jersey. Its Wednesday publication has a circulation of 55,000 and its Saturday publication, distributed in New Jersey only, has a circulation of 12,000.

The Center is a non-profit organization within Seton Hall Law School, one of the major educational institutions in the state of New Jersey. The Center engages in advocacy, public education, scholarship and provision of direct legal services in relation to immigrant rights and other civil rights issues. Within its public education and advocacy mandate, the Center's staff disseminates press releases, writes opinion pieces in major local newspapers, distributes information via the Center's web site, and holds conferences, panel discussions, townhall meetings and informal sessions with local community groups and advocacy coalitions. The Center works closely with a range of organizations that provide direct services to immigrants throughout the state, and its staff publish articles and speak at public events related to immigration issues. The Center also provides a range of legal services to individuals in New Jersey who have been subject to human rights and civil rights violations, with a particular focus on the rights of immigrants.

## **B. Definitions**

1) Fugitive. In this request, the term "fugitive" is defined as "an alien who has failed to depart the United States pursuant to a final order of removal, deportation or exclusion; or who has failed to report to a Detention and Removal Office ("DRO") after receiving notice to do so." See Office of the Inspector General, "An Assessment of United States Immigration and Customs Enforcement's Fugitive Operations Teams" ("OIG Report") at 26 (**Appendix A**). For the purpose of this request, the term "fugitive" is considered interchangeable with the term "absconder."

2) "Specified Operations" refers to fugitive operations at the following locations and times (where no date is specified, the operation occurred at some point between January 1, 2004 and the present):

- i) Trenton, New Jersey in or around May 2004;<sup>1</sup>
- ii) Freehold, New Jersey in or around May-August, 2004;<sup>2</sup>
- iii) Hightstown, New Jersey in or around May-August, 2004 and early 2005;<sup>3</sup>

<sup>1</sup> See "Advocates decry alien raids," The Trentonian, August 20, 2004 ([http://www.zwire.com/site/news.cfm?newsid=12739087&BRD=1697&PAG=461&dept\\_id=44551&rft=6](http://www.zwire.com/site/news.cfm?newsid=12739087&BRD=1697&PAG=461&dept_id=44551&rft=6), accessed October 10, 2007). See also "Palmer makes push for immigrants," The Trentonian, December 23, 2004.

([http://www.zwire.com/site/news.cfm?newsid=13613438&BRD=1697&PAG=461&dept\\_id=44551&rft=6](http://www.zwire.com/site/news.cfm?newsid=13613438&BRD=1697&PAG=461&dept_id=44551&rft=6), accessed October 10, 2007).

<sup>2</sup> *Id.*

- iv) Ewing, New Jersey on and around August 26, 2004;
- v) Princeton, New Jersey in or around late 2004 and early 2005, including October 11-13, 2004;<sup>4</sup>
- vi) West Windsor, New Jersey, in late 2004 and early 2005;<sup>5</sup>
- vii) Trenton, New Jersey on or around February 12, 2005;<sup>6</sup>
- viii) Union City, New Jersey on and around May 1, 2005;<sup>7</sup>
- ix) Bridgeton, New Jersey in or around July – September, 2005;
- x) Patterson, NJ on or around March 4, 2006;
- xi) Multiple towns in New Jersey, May 26 – June 14, 2006;<sup>8</sup>
- xii) Edison, New Jersey on and around May 24, 2006;<sup>9</sup>
- xiii) Metuchen, New Jersey on and around May 24, 2006;<sup>10</sup>
- xiv) Woodbridge, New Jersey on and around May 24, 2006;<sup>11</sup>
- xv) Penn's Grove, New Jersey on and around August 1, 2006;
- xvi) Bridgeton, New Jersey in or around June, 2006 and September, 2006;
- xvii) Princeton, New Jersey on and around October 12, 2006;
- xviii) Clifton, New Jersey on and around November 13, 2006;
- xix) Atlantic City, New Jersey on and around November 13-19, 2006;<sup>12</sup>
- xx) Vineland, New Jersey on or around February 1-2, 2007;<sup>13</sup>
- xxi) Englewood New Jersey on and around March 26, 2007;<sup>14</sup>

<sup>3</sup> *Id.*; see also Terry Golway, "Back Into The Shadows," New York Times, February 20, 2005 ([www.nytimes.com/2005/02/20/nyregion/thecity/20NJ.html?ex=1189137600&en=7e73291b9a7e4c37&ei=5070](http://www.nytimes.com/2005/02/20/nyregion/thecity/20NJ.html?ex=1189137600&en=7e73291b9a7e4c37&ei=5070), accessed October 10, 2007).

<sup>4</sup> See Terry Golway, "Back Into The Shadows," New York Times, February 20, 2005 ([www.nytimes.com/2005/02/20/nyregion/thecity/20NJ.html?ex=1189137600&en=7e73291b9a7e4c37&ei=5070](http://www.nytimes.com/2005/02/20/nyregion/thecity/20NJ.html?ex=1189137600&en=7e73291b9a7e4c37&ei=5070), accessed October 10, 2007).

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

<sup>7</sup> See Alix Nguefack, "Raids Terrorize Communities," New American Media, August 12, 2006 ([news.newamericamedia.org/news/view\\_article.html?article\\_id=9f33d3d1eb4d1cbbc8f97728411c609a](http://news.newamericamedia.org/news/view_article.html?article_id=9f33d3d1eb4d1cbbc8f97728411c609a), accessed October 10, 2007).

<sup>8</sup> See Jennifer Lee and Julia Mead, "2,100 are Arrested on Immigration Violations," New York Times, June 15, 2006 (<http://www.nytimes.com/2006/06/15/nyregion/15alien.html?partner=rssnyt&emc=rss>, accessed October 15, 2007).

<sup>9</sup> See ICE Press Release, "ICE operation arrests 32 fugitives hiding in Edison, New Jersey: Surveillance by ICE offices indicates some fugitives were working together to defy the law," May 26, 2006 ([www.ice.gov/pi/news/newsreleases/articles/060524edison.htm](http://www.ice.gov/pi/news/newsreleases/articles/060524edison.htm), accessed October 12, 2007); John Dunphy, "They can run, but they can't hide for long: Homeland Security Division Cracks Down On Illegal Immigrants," The Sentinel, May 31, 2006 ([http://ems.gmnews.com/news/2006/0531/Front\\_Page/005.html](http://ems.gmnews.com/news/2006/0531/Front_Page/005.html), accessed October 10, 2007); Brian Donohue, "Raids leave gaps in a thriving community: Immigration laws target Indonesians," The Star-Ledger, July 9, 2006 (accessed on LexisNexis.com, October 17, 2007); Susan Epstein, "Immigration raids net 32 fugitives: Agents shake up Middlesex County's Indonesian community," The Star-Ledger, May 25, 2006 (accessed on LexisNexis.com, October 17, 2007).

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See Derek Harper, "Immigration officials make 137 arrests around N.J.," Press of Atlantic City, November 21, 2006 (<http://www.pressofatlanticcity.com/news/story/6952955p-6815239c.html>, accessed November 26, 2007).

<sup>13</sup> See Miles Jackson, "Immigration Agents Spook City Residents," The Daily Journal (Vineland, New Jersey), February 2, 2007 (accessed on LexisNexis.com, October 17, 2007).

<sup>14</sup> See Lucas Sanchez, "ICE Raid in Inglewood," Blog at Blue Jersey.com, March 26, 2007 (<http://www.bluejersey.com/showDiary.do?diaryId=4373>, accessed October 9, 2007).

- xxii) Morristown, New Jersey on and around June 6, 2007;<sup>15</sup>
- xxiii) Lakewood, New Jersey on and around June 13, 2007;
- xxiv) Freehold, New Jersey on and around June 13, 2007;
- xxv) Emerson, New Jersey on and around June 20, 2007;<sup>16</sup>
- xxvi) Hillsdale, New Jersey on and around June 20, 2007;<sup>17</sup>
- xxvii) Westwood, New Jersey on and around June 20, 2007;<sup>18</sup>
- xxviii) Union City, New Jersey on and around August 14, 2007;
- xxix) Bloomfield, New Jersey on and around August 22, 2007;
- xxx) Vineland, New Jersey and surrounding areas on August 29, 2007;<sup>19</sup>
- xxxi) Passaic, New Jersey around August - September, 2007;
- xxxii) Patterson, New Jersey around August - September, 2007;
- xxxiii) Irvington, New Jersey around August - September, 2007
- xxxiv) Livingston, New Jersey around 10-17 September, 2007;
- xxxv) Bergenline Avenue, Union City, New Jersey, September 26-27, 2007;
- xxxvi) New Brunswick, New Jersey around August - October, 2007;
- xxxvii) New Egypt, New Jersey on and around October 3, 2007;
- xxxviii) Princeton, New Jersey on and around December 7, 2007;
- xxxix) Newark, New Jersey; and
- xl) Bogota, New Jersey.

3) "Operations Reported by ICE" refers to the following fugitive operations in New Jersey that were reported by ICE:

- i) Multiple towns in New Jersey, October, 2005 -- May, 2006;<sup>20</sup>
- ii) Multiple towns in New Jersey, October 12-19, 2006;<sup>21</sup>
- iii) Multiple towns in New Jersey, November 13-20, 2006;<sup>22</sup>
- iv) Multiple towns in New Jersey, January-February, 2007;<sup>23</sup>

<sup>15</sup> See Nancy Rosenstock, "'La Migra' Grabs 7 in New Jersey," *The Militant*, June 25, 2007 (<http://www.themilitant.com/2007/7125/712507.html>, accessed October 10, 2007); Daily Record Staff Report, "Morris Gang, Immigration Raid Nets 7," *The Daily Record*, June 7, 2007 (accessed on LexisNexis.com, October 17, 2007).

<sup>16</sup> See Elizabeth Llorente, "18 Reputed Gang Members Arrested," *The Bergen Record*, June 22, 2007 (<http://www.northjersey.com/page.php?qrstr=eXJpcnk3ZjcxN2Y3dnFIZUVFeXkzJmZnYmVsN2Y3dnFIZUVFeXk3MTU1NzAx>, accessed November 19, 2007).

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See James Quaranta, "Six Arrested in Immigration Raids," *The Daily Journal* (Vineland, New Jersey), August 31, 2007 (accessed on LexisNexis.com on October 17, 2007).

<sup>20</sup> See John Dunphy, "They can run, but they can't hide for long: Homeland Security Division Cracks Down On Illegal Immigrants," *The Sentinel*, May 31, 2006

([http://ems.gmnews.com/news/2006/0531/Front\\_Page/005.html](http://ems.gmnews.com/news/2006/0531/Front_Page/005.html), accessed October 10, 2007), quoting Michael Gilhooly, director of communications for the Northeast section of ICE ("About 796 fugitive operations team arrests have been made in New Jersey alone since October").

<sup>21</sup> See ICE Press Release, "New Jersey operation nets 111 fugitive alien and other immigration status violators," October 19, 2006 (<http://www.ice.gov/pi/news/newsreleases/articles/061019newark.htm>, accessed October 10, 2007).

<sup>22</sup> See ICE Press Release, "New Jersey Operation Nets 137 Fugitive Alien and Other Immigration Status Violations: Arrests Are Result of Operation Return to Sender," November 20, 2006 ([www.ice.gov/pi/news/newsreleases/articles/061120newark.htm](http://www.ice.gov/pi/news/newsreleases/articles/061120newark.htm), accessed October 12, 2007).

- v) Multiple towns in New Jersey, March 1-30, 2007;<sup>24</sup>
- vi) Multiple towns in New Jersey, April 9-27, 2007;<sup>25</sup>
- vii) Edison, New Jersey, May 24, 2006;<sup>26</sup> and
- viii) Multiple towns in New Jersey, August-September, 2007.<sup>27</sup>

4) Records. The term "records" includes, but is not limited to, all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

### **C. Request for Information:**

Requesters seek the following records:

#### **1) Policies and Procedures**

All guidelines, instructions, memoranda, protocols or training materials issued from January 1, 2004 to the present, setting forth policies or procedures related to operations to identify, locate, or arrest suspected fugitives in the state of New Jersey. These include but are not limited to operations conducted as part of "Operation Return to Sender," "Operation Predator" and "Operation Community Shield."

#### **2) Database Records**

All records related to individuals apprehended during Specified Operations (i) – (xl) and Operations Reported by ICE (i) – (vii), held in the following databases:

a) Fugitive Case Management System ("FCMS");

Please include data from all FCMS data fields (either as individual records or as a spreadsheet), including but not limited to classification of each apprehended

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<sup>23</sup> See ICE Press Release, "New Jersey fugitive teams arrest 363 in two-month operation," March 1, 2007 (<http://www.ice.gov/pi/news/newsreleases/articles/070301Newark.htm>, accessed October 10, 2007).

<sup>24</sup> See ICE Press Release, "Title ICE arrests 128 immigration violators in statewide enforcement operation: Sex offenders, violent criminal and fugitive aliens among those arrested," April 2, 2007 ([www.ice.gov/pi/news/newsreleases/articles/070402newark.htm](http://www.ice.gov/pi/news/newsreleases/articles/070402newark.htm), accessed October 12, 2007).

<sup>25</sup> See ICE Press Release, "ICE Fugitive Operations Teams Arrest 217 Immigration Violators: 37 Criminal Aliens Apprehended During Statewide Enforcement Operation," May 1, 2007 ([www.ice.gov/pi/news/newsreleases/articles/070501newark.htm](http://www.ice.gov/pi/news/newsreleases/articles/070501newark.htm), accessed October 12, 2007).

<sup>26</sup> See ICE Press Release, "ICE operation arrests 32 fugitives hiding in Edison, New Jersey: Surveillance by ICE offices indicates some fugitives were working together to defy the law," May 26, 2006 ([www.ice.gov/pi/news/newsreleases/articles/060524edison.htm](http://www.ice.gov/pi/news/newsreleases/articles/060524edison.htm), accessed October 12, 2007).

<sup>27</sup> See ICE Press Release, "ICE Partners With Local Officers Nationwide To Arrest Gang Members: More than 1,300 Arrests Nationally; 27 Arrests Made in New Jersey," October 9, 2007 ([www.ice.gov/pi/news/newsreleases/articles/071009newark.htm](http://www.ice.gov/pi/news/newsreleases/articles/071009newark.htm), accessed October 12, 2007).



fugitive, as (1) a fugitive posing a threat to the nation, (2) a fugitive posing a threat to the community, (3) a fugitive with a violent criminal history, (4) a criminal fugitive, or (5) a non-criminal fugitive.<sup>28</sup> Please also include FCMS records related to any Warrants of Deportation/Removal, or search warrants relied upon in apprehending each individual.

b) National Crime Information Center (NCIC); and

Please include data from all NCIC data fields, including but not limited to records related to any Warrants of Deportation/Removal, or search warrants relied upon in apprehending each individual.

c) Deportable Alien Control System.

### 3) FOT Apprehension Goal

The DRO Memorandum, entitled "Fugitive Operations Case Priority and Annual Goals," January 31, 2006, including any subsequent versions or updates to the memorandum.

### 4) Fugitive Operations Team Plans

All Fugitive Operations Team ("FOT") plans submitted for approval to the DRO office in Newark or Washington, D.C., or to the National Fugitive Operations Program ("NFOP") in relation to each operation within the Specified Operations and/or the Operations Reported by ICE. Please also provide any documents that reveal whether any of those plans were approved by NFOP.

### 5) National Fugitive Operations Program Weekly Statistical Reports

All NFOP weekly statistical reports related to the state of New Jersey from January 1, 2004 to the present. *See* OIG Report at 17 ("In its National Fugitive Operations Program weekly statistical report, the office recorded, in separate columns, the total number of apprehended fugitive and non-fugitive aliens.")

### 6) Records Related to Operations Reported By ICE

Any records revealing the following information for each and every arrest reported in the Operations Reported by ICE (*see* B.3 (i)-(vii)):

- a) the name and date of birth of any individual arrested;
- b) the nationality of any individual arrested;
- c) the location of any arrest, including the address of any private residence entered in the course of apprehending the arrestee; the date and time of attendance; and the number of individuals arrested at the residence;

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<sup>28</sup> *See* Office of Detention and Removal Operations Memorandum, "Fugitive Operations Case Priority and Annual Goals," January 31, 2006.

- d) any information concerning other individuals present at a residence at the time of an arrest;
- e) any information concerning a residence entered in the course of searching for a fugitive, where no arrests were made;<sup>29</sup>
- f) whether consent was given to enter any residence that an ICE agent entered in the course of searching for a fugitive, and by whom consent was given;<sup>30</sup>
- g) whether or not each individual arrested was a fugitive alien, and whether each individual was a criminal fugitive or suspected of posing a threat to the community;
- h) any warrant of deportation/removal, or search warrant relied upon in the course of arresting the individual;
- i) any other document containing information on the arrestee that was relied upon in relation to the arrest, including any document containing a photograph and/or printed information related to the arrestee; and
- j) if a warrant formed the basis for entry onto a premises, whether the individual(s) who were the subject of the warrant were found at the premises.

Such records include the fugitive apprehension report for each and every arrest reported in the Operations Reported by ICE.

#### 7) Records Related to Specified Operations

Any records revealing the following information for each of the Specified Operations (*see* B.2 (i) – (xl)):

- a) the name and date of birth of any individual arrested;
- b) the nationality of any individual arrested;
- c) the location of any arrest, including the address of any private residence entered in the course of apprehending the arrestee; the date and time of attendance; and the number of individuals arrested at the residence;
- d) any information concerning other individuals present at a residence at the time of an arrest;
- e) any information concerning a residence entered in the course of searching for a fugitive, where no arrests were made;<sup>31</sup>
- f) whether consent was given to enter any residence that an ICE agent entered in the course of searching for a fugitive, and by whom consent was given;<sup>32</sup>
- g) whether or not each individual arrested was a fugitive alien, and whether each individual was a criminal fugitive or suspected of posing a threat to the community;

<sup>29</sup> See 8 C.F.R. 287.8(f)(3) ("Adequate records must be maintained noting the results of every site inspection, including those where no illegal aliens are located").

<sup>30</sup> See 8 C.F.R. 287.8(f)(2) ("When consent to enter [a residence] is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given").

<sup>31</sup> See 8 C.F.R. 287.8(f)(3) ("Adequate records must be maintained noting the results of every site inspection, including those where no illegal aliens are located").

<sup>32</sup> See 8 C.F.R. 287.8(f)(2) ("When consent to enter [a residence] is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given").

- h) any warrant of deportation/removal, or search warrant relied upon in the course of arresting the individual; and
- i) if a warrant formed the basis for entry onto a premises, whether the individual(s) who were the subject of the warrant were found at the premises.

Such records include the fugitive apprehension report for each and every arrest reported in the Operations Reported by ICE.

#### 8) Local Law Enforcement

The March 2007 OIG Report states: “. . . many teams have solicited the assistance of local law enforcement officers to participate in fugitive apprehensions.” OIG Report, 26.

Please provide:

- a) records revealing the names of any towns, municipalities, or state departments in New Jersey whose law enforcement officers provided assistance to an FOT or otherwise participated in fugitive apprehensions from January 1, 2004 to the present;
- b) all agreements, including information-sharing agreements, with any state or local government or law enforcement agency in New Jersey, from January 1, 2004 to the present, such as Enterprise Agreements, Memoranda of Understanding, or Interconnection Security Agreements; and
- c) all communications between a member of an FOT in New Jersey and any local or state government employee, agent or law enforcement officer in New Jersey from January 1, 2004 to the present.

#### D. Fee Waiver:

Requesters are entitled to a waiver of all costs “because [the information that requesters seek] is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in [requesters’] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (Records furnished without charge if the information is in the public interest, and disclosure is not in commercial interest of institution).

The public has an interest in being informed about the manner in which federal immigration agents are enforcing immigration laws. In particular, the public has a strong interest in ensuring that immigration agents are operating within constitutional limitations protecting individuals from unauthorized searches of their homes. The records sought in this request will also further public understanding of the extent to which state or local governments are participating in the enforcement of federal immigration laws. As the list of Specified Operations and Operations Reported by ICE indicates, this type of government activity concretely affects many individuals and groups across the state of New Jersey, and indeed, across the country. However there is almost no information in the public domain (aside from individual anecdotes) about the manner in which



residential searches and arrests are being conducted, and the government's bases for those searches and arrests.

Courts have repeatedly ruled that seeking information for scholarly purposes is consistent with the public interest fee waiver provided by 5 U.S.C. § 552(a)(4)(A)(iii). *See, e.g., Allen v. Federal Bureau of Investigation*, 551 F. Supp. 694, 697 (D.D.C. 1982) (requester was engaged in a program of scholarly research into the work of the United States House Select Committee on Assassinations in its investigation of President Kennedy's assassination); *Irons v. Federal Bureau of Investigation*, 571 F. Supp. 1241 (D. Mass. 1983) (requesters were recognized legal scholars and historians seeking information relating to Smith Act prosecutions of Communist Party leaders). Disclosure of the requested information is in the public interest because the Center plans to disseminate such information through scholarly articles and reports, as well as through its staff speaking at educational events related to immigration.

Requesters have no commercial interest in the matter. The Center will make any information that it receives as a result of this FOIA request available to the public, including the press, at no cost. The Brazilian Voice, a representative of the news media, has no commercial interest in the matter. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)).

Alternately, the requesters seek a reduction in duplication fees pursuant to 6 C.F.R. § 5.11 (d)(3)(i), because requesters have no commercial interest in the matter. The Department should provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages of duplication. *See* 6 C.F.R. § 5.11 (d)(2). Search fees should not be assessed. *See* 6 C.F.R. § 5.11(d)(1) ("No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media").

#### **D. Expedited Process:**

Title 5 U.S.C. § 552(a)(6)(E) governs expedited processing of requests for information in cases in which the entity requesting the records demonstrates a compelling need. If the requester is "primarily engaged in disseminating information," urgency to inform the public concerning actual or alleged Federal Government activity constitutes a "compelling need." § 552(a)(6)(E)(v)(II).

Department of Homeland Security regulations require that requests be given expedited treatment if they involve an "urgency to inform the public about an actual or alleged federal government activity," if made by a person primarily engaged in disseminating information. 6 C.F.R. § 5.5(d).

The Brazilian Voice is a regularly published, widely distributed newspaper that is “primarily engaged in disseminating information” on current events and issues of interest to the Brazilian community in New Jersey, New York, Connecticut, Massachusetts and Pennsylvania. *See Bloomberg, L.P. v. United States Food and Drug Administration*, 500 F.Supp.2d 371 (S.D.N.Y. 2007).

The Center is an entity that is “primarily engaged in disseminating information” because it is “an entity that gathers information of potential interest to a segment of the public.” *National Security Archive v. Dept. of Defense*, 880 F.2s 1381, 1387 (D.C. Cir. 1989). The Center’s primary goal is raising public awareness and protecting and promoting the rights of individuals in the state of New Jersey, particularly the rights of immigrants. Through provision of direct services, scholarly research and work with local communities, the Center’s staff and students gather information on immigrants’ rights issues, and disseminate that information through press releases, opinion pieces in major local newspapers, and through the Center’s web site, as well as by speaking at conferences, panel discussions, townhall meetings and informal sessions with local community groups and advocacy coalitions.

There is a compelling need for the information that requesters are seeking, because there is an urgent need to inform the public about an actual or alleged federal government activity; specifically, ICE “raids” of individuals’ homes in the course of fugitive apprehension operations that are presently continuing throughout the state of New Jersey (and elsewhere). Numerous accounts of immigration enforcement agents entering homes without appropriate warrants have received repeated and widespread media attention throughout New Jersey, as indicated by the wide range of news sources cited in the Specified Operations definition paragraph (*see* paragraph B.2). These accounts reveal widespread community and local government concern over disruptive, intimidating and, in some instances, potentially illegal tactics employed by immigration agents conducting fugitive apprehension activities in private residences throughout the state. For example, Trenton Councilman Manuel Segura stated that the raids into immigrants’ homes “stripped away all dignity of the people living there; they were treated like dogs.”<sup>33</sup> Nevertheless, there is virtually no information in the public domain that indicates the bases on which and the methods by which ICE agents enter individuals’ homes in the course of fugitive apprehension operations, or the government’s policies and practices concerning the apprehension of fugitives and other individuals in their homes.

Because of ICE agents’ ongoing use of questionable methods for entering private homes in a rapidly escalating number of raids across the state of New Jersey, the situation is a matter of “current exigency.” *Long v. Dept. of Homeland Sec.*, 436 F. Supp. 2d 38, 42 (D.D.C 2006). *See* range of media articles referenced in paragraph B.2; *see also* Brian Donohue, “Raids nab nearly twice as many illegal immigrants,” *Star Ledger*, December

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<sup>33</sup> “Palmer makes push for immigrants,” *The Trentonian*, December 23, 2007 ([http://www.zwire.com/site/news.cfm?newsid=13613438&BRD=1697&PAG=461&dept\\_id=44551&rft=6](http://www.zwire.com/site/news.cfm?newsid=13613438&BRD=1697&PAG=461&dept_id=44551&rft=6), accessed October 10, 2007).

5, 2007 (reporting that "federal immigration fugitive teams in New Jersey arrested 2,079 illegal immigrants in the year ending Sept. 30, nearly twice the total of the previous year" ... "reflect[ing] a nationwide trend that has seen deportations skyrocket").

If you deny any part of this request, please cite each specific reason or exemption to FOIA that you think justifies your refusal to release the information, and notify us of appeal procedures available to us under the law. Requesters expect release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to withhold information or a denial of fee waivers or expedited processing.

Requesters certify that the above information is "true and correct to the best of the requester[s'] knowledge." *See* 6 C.F.R. § 5.5(d)(3). If you have any questions processing this request, you may contact Bassina Farbenblum at 973.642.8700. Thank you for your consideration of this request.

Please furnish all applicable records, in electronic form, on CD, to:

Bassina Farbenblum  
Seton Hall School of Law Center for Social Justice  
833 McCarter Highway  
Newark, New Jersey 07102

Very truly yours,



ROBERTO LIMA  
Brazilian Voice  
412 Chesnut St.  
Newark, New Jersey 07105

BASSINA FARBENBLUM  
Seton Hall School of Law Center for Social Justice  
833 McCarter Highway  
Newark, New Jersey 07102



SETON HALL | **LAW**

Center for Social Justice

833 McCarter Highway, Newark, New Jersey 07102-5210  
Tel. (973) 642-8700 • Fax (973) 642-5939/8295

Bassina Farbenblum  
Practitioner in Residence  
International Human Rights/Rule of Law Project  
(973) 642 8700 (t)  
(973) 642 8295 (f)  
farbenba@shu.edu

FOIA Officer  
New York Intelligence Office  
1 Penn Plaza  
Suite 720  
New York, NY 10119

December 13, 2007

**Re: Freedom of Information Act Request/ Expedited Processing Requested.**

Dear Madam/Sir:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"), 6 C.F.R. § 5 (Department of Homeland Security FOIA regulations) and 8 C.F.R. §103.10 (Department of Homeland Security immigration FOIA regulations).

This request is submitted by Seton Hall School of Law's Center for Social Justice ("the Center"), and the Brazilian Voice newspaper.

We are filing this request concurrently with Department of Homeland Security Headquarters and Privacy Office, U.S. Citizenship & Immigration Services, ICE Headquarters, ICE Field Office (Newark, NJ ), ICE Field Office (New York, NY), Fugitive Operations Support Center (C/O ICE Headquarters), Compliance Enforcement Division (Washington, DC; C/O ICE Headquarters), Office of Detention and Removal Operations (Washington, DC), Office of Detention and Removal Operations (Newark, NJ), Office of Investigations (Washington, DC), Office of Investigations (Newark, NJ), National Fugitive Operations Program (Washington, DC; C/O ICE Headquarters), New Jersey Fugitive Operations Teams (C/O ICE Headquarters) and Federal Law Enforcement Training Center.

**A. Requesters**

The Brazilian Voice is a Portuguese-language newspaper that publishes two editions each week and is distributed in New Jersey, New York, Connecticut, Massachusetts and Pennsylvania. Established in 1988, it reports on a wide range of current events and issues of interest to the Brazilian community, including issues and events related to immigration enforcement. Its Saturday edition reports specifically on issues and current events of interest to the Brazilian community in New Jersey. Its Wednesday publication has a circulation of 55,000 and its Saturday publication, distributed in New Jersey only, has a circulation of 12,000.

The Center is a non-profit organization within Seton Hall Law School, one of the major educational institutions in the state of New Jersey. The Center engages in advocacy, public education, scholarship and provision of direct legal services in relation to immigrant rights and other civil rights issues. Within its public education and advocacy mandate, the Center's staff disseminates press releases, writes opinion pieces in major local newspapers, distributes information via the Center's web site, and holds conferences, panel discussions, townhall meetings and informal sessions with local community groups and advocacy coalitions. The Center works closely with a range of organizations that provide direct services to immigrants throughout the state, and its staff publish articles and speak at public events related to immigration issues. The Center also provides a range of legal services to individuals in New Jersey who have been subject to human rights and civil rights violations, with a particular focus on the rights of immigrants.

## **B. Definitions**

1) Fugitive. In this request, the term "fugitive" is defined as "an alien who has failed to depart the United States pursuant to a final order of removal, deportation or exclusion; or who has failed to report to a Detention and Removal Office ("DRO") after receiving notice to do so." See Office of the Inspector General, "An Assessment of United States Immigration and Customs Enforcement's Fugitive Operations Teams" ("OIG Report") at 26 (**Appendix A**). For the purpose of this request, the term "fugitive" is considered interchangeable with the term "absconder."

2) "Specified Operations" refers to fugitive operations at the following locations and times (where no date is specified, the operation occurred at some point between January 1, 2004 and the present):

- i) Trenton, New Jersey in or around May 2004;<sup>1</sup>
- ii) Freehold, New Jersey in or around May-August, 2004;<sup>2</sup>
- iii) Hightstown, New Jersey in or around May-August, 2004 and early 2005;<sup>3</sup>

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<sup>1</sup> See "Advocates decry alien raids," The Trentonian, August 20, 2004 ([http://www.zwire.com/site/news.cfm?newsid=12739087&BRD=1697&PAG=461&dept\\_id=44551&rft=6](http://www.zwire.com/site/news.cfm?newsid=12739087&BRD=1697&PAG=461&dept_id=44551&rft=6), accessed October 10, 2007). See also "Palmer makes push for immigrants," The Trentonian, December 23, 2004.

([http://www.zwire.com/site/news.cfm?newsid=13613438&BRD=1697&PAG=461&dept\\_id=44551&rft=6](http://www.zwire.com/site/news.cfm?newsid=13613438&BRD=1697&PAG=461&dept_id=44551&rft=6), accessed October 10, 2007).

<sup>2</sup> *Id.*



- iv) Ewing, New Jersey on and around August 26, 2004;
- v) Princeton, New Jersey in or around late 2004 and early 2005, including October 11-13, 2004;<sup>4</sup>
- vi) West Windsor, New Jersey, in late 2004 and early 2005;<sup>5</sup>
- vii) Trenton, New Jersey on or around February 12, 2005;<sup>6</sup>
- viii) Union City, New Jersey on and around May 1, 2005;<sup>7</sup>
- ix) Bridgeton, New Jersey in or around July – September, 2005;
- x) Patterson, NJ on or around March 4, 2006;
- xi) Multiple towns in New Jersey, May 26 – June 14, 2006;<sup>8</sup>
- xii) Edison, New Jersey on and around May 24, 2006;<sup>9</sup>
- xiii) Metuchen, New Jersey on and around May 24, 2006;<sup>10</sup>
- xiv) Woodbridge, New Jersey on and around May 24, 2006;<sup>11</sup>
- xv) Penn's Grove, New Jersey on and around August 1, 2006;
- xvi) Bridgeton, New Jersey in or around June, 2006 and September, 2006;
- xvii) Princeton, New Jersey on and around October 12, 2006;
- xviii) Clifton, New Jersey on and around November 13, 2006;
- xix) Atlantic City, New Jersey on and around November 13-19, 2006;<sup>12</sup>
- xx) Vineland, New Jersey on or around February 1-2, 2007;<sup>13</sup>
- xxi) Englewood New Jersey on and around March 26, 2007;<sup>14</sup>

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<sup>3</sup> *Id.*; see also Terry Golway, "Back Into The Shadows," New York Times, February 20, 2005 ([www.nytimes.com/2005/02/20/nyregion/thecity/20NJ.html?ex=1189137600&en=7e73291b9a7e4c37&ei=5070](http://www.nytimes.com/2005/02/20/nyregion/thecity/20NJ.html?ex=1189137600&en=7e73291b9a7e4c37&ei=5070), accessed October 10, 2007).

<sup>4</sup> See Terry Golway, "Back Into The Shadows," New York Times, February 20, 2005 ([www.nytimes.com/2005/02/20/nyregion/thecity/20NJ.html?ex=1189137600&en=7e73291b9a7e4c37&ei=5070](http://www.nytimes.com/2005/02/20/nyregion/thecity/20NJ.html?ex=1189137600&en=7e73291b9a7e4c37&ei=5070), accessed October 10, 2007).

<sup>5</sup> See *id.*

<sup>6</sup> See *id.*

<sup>7</sup> See Alix Nguefack, "Raids Terrorize Communities," New American Media, August 12, 2006 ([news.newamericamedia.org/news/view\\_article.html?article\\_id=9f33d3d1eb4d1cbbc8f97728411c609a](http://news.newamericamedia.org/news/view_article.html?article_id=9f33d3d1eb4d1cbbc8f97728411c609a), accessed October 10, 2007).

<sup>8</sup> See Jennifer Lee and Julia Mead, "2,100 are Arrested on Immigration Violations," New York Times, June 15, 2006 (<http://www.nytimes.com/2006/06/15/nyregion/15alien.html?partner=rssnyt&emc=rss>, accessed October 15, 2007).

<sup>9</sup> See ICE Press Release, "ICE operation arrests 32 fugitives hiding in Edison, New Jersey: Surveillance by ICE offices indicates some fugitives were working together to defy the law," May 26, 2006 ([www.ice.gov/pi/news/newsreleases/articles/060524edison.htm](http://www.ice.gov/pi/news/newsreleases/articles/060524edison.htm), accessed October 12, 2007); John Dunphy, "They can run, but they can't hide for long: Homeland Security Division Cracks Down On Illegal Immigrants," The Sentinel, May 31, 2006 ([http://ems.gmnnews.com/news/2006/0531/Front\\_Page/005.html](http://ems.gmnnews.com/news/2006/0531/Front_Page/005.html), accessed October 10, 2007); Brian Donohue, "Raids leave gaps in a thriving community: Immigration laws target Indonesians," The Star-Ledger, July 9, 2006 (accessed on LexisNexis.com, October 17, 2007); Susan Epstein, "Immigration raids net 32 fugitives : Agents shake up Middlesex County's Indonesian community," The Star-Ledger, May 25, 2006 (accessed on LexisNexis.com, October 17, 2007).

<sup>10</sup> See *id.*

<sup>11</sup> See *id.*

<sup>12</sup> See Derek Harper, "Immigration officials make 137 arrests around N.J.," Press of Atlantic City, November 21, 2006 (<http://www.pressofatlanticcity.com/news/story/6952955p-6815239c.html>, accessed November 26, 2007).

<sup>13</sup> See Miles Jackson, "Immigration Agents Spook City Residents," The Daily Journal (Vineland, New Jersey), February 2, 2007 (accessed on LexisNexis.com, October 17, 2007).

<sup>14</sup> See Lucas Sanchez, "ICE Raid in Inglewood," Blog at Blue Jersey.com, March 26, 2007 (<http://www.bluejersey.com/showDiary.do?diaryId=4373>, accessed October 9, 2007).

- xxii) Morristown, New Jersey on and around June 6, 2007;<sup>15</sup>
- xxiii) Lakewood, New Jersey on and around June 13, 2007;
- xxiv) Freehold, New Jersey on and around June 13, 2007;
- xxv) Emerson, New Jersey on and around June 20, 2007;<sup>16</sup>
- xxvi) Hillsdale, New Jersey on and around June 20, 2007;<sup>17</sup>
- xxvii) Westwood, New Jersey on and around June 20, 2007;<sup>18</sup>
- xxviii) Union City, New Jersey on and around August 14, 2007;
- xxix) Bloomfield, New Jersey on and around August 22, 2007;
- xxx) Vineland, New Jersey and surrounding areas on August 29, 2007;<sup>19</sup>
- xxxi) Passaic, New Jersey around August - September, 2007;
- xxxii) Patterson, New Jersey around August - September, 2007;
- xxxiii) Irvington, New Jersey around August - September, 2007
- xxxiv) Livingston, New Jersey around 10-17 September, 2007;
- xxxv) Bergenline Avenue, Union City, New Jersey, September 26-27, 2007;
- xxxvi) New Brunswick, New Jersey around August - October, 2007;
- xxxvii) New Egypt, New Jersey on and around October 3, 2007;
- xxxviii) Princeton, New Jersey on and around December 7, 2007;
- xxxix) Newark, New Jersey; and
- xl) Bogota, New Jersey.

3) "Operations Reported by ICE" refers to the following fugitive operations in New Jersey that were reported by ICE:

- i) Multiple towns in New Jersey, October, 2005 – May, 2006;<sup>20</sup>
- ii) Multiple towns in New Jersey, October 12-19, 2006;<sup>21</sup>
- iii) Multiple towns in New Jersey, November 13-20, 2006;<sup>22</sup>
- iv) Multiple towns in New Jersey, January-February, 2007;<sup>23</sup>

<sup>15</sup> See Nancy Rosenstock, "La Migra' Grabs 7 in New Jersey," *The Militant*, June 25, 2007 (<http://www.themilitant.com/2007/7125/712507.html>, accessed October 10, 2007); Daily Record Staff Report, "Morris Gang, Immigration Raid Nets 7," *The Daily Record*, June 7, 2007 (accessed on LexisNexis.com, October 17, 2007).

<sup>16</sup> See Elizabeth Llorente, "18 Reputed Gang Members Arrested," *The Bergen Record*, June 22, 2007 (<http://www.northjersey.com/page.php?qrst=eXJpcnk3ZjcxN2Y3dnFIZUVFeXkzJmZnYmVsN2Y3dnFIZUVFeXk3MTU1NzAx>, accessed November 19, 2007).

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> See James Quaranta, "Six Arrested in Immigration Raids," *The Daily Journal* (Vineland, New Jersey), August 31, 2007 (accessed on LexisNexis.com on October 17, 2007).

<sup>20</sup> See John Dunphy, "They can run, but they can't hide for long: Homeland Security Division Cracks Down On Illegal Immigrants," *The Sentinel*, May 31, 2006 ([http://ems.gmnnews.com/news/2006/0531/Front\\_Page/005.html](http://ems.gmnnews.com/news/2006/0531/Front_Page/005.html), accessed October 10, 2007), quoting Michael Gilhooly, director of communications for the Northeast section of ICE ("About 796 fugitive operations team arrests have been made in New Jersey alone since October").

<sup>21</sup> See ICE Press Release, "New Jersey operation nets 111 fugitive alien and other immigration status violators," October 19, 2006 (<http://www.ice.gov/pi/news/newsreleases/articles/061019newark.htm>, accessed October 10, 2007).

<sup>22</sup> See ICE Press Release, "New Jersey Operation Nets 137 Fugitive Alien and Other Immigration Status Violations: Arrests Are Result of Operation Return to Sender," November 20, 2006 ([www.ice.gov/pi/news/newsreleases/articles/061120newark.htm](http://www.ice.gov/pi/news/newsreleases/articles/061120newark.htm), accessed October 12, 2007).

- v) Multiple towns in New Jersey, March 1-30, 2007;<sup>24</sup>
- vi) Multiple towns in New Jersey, April 9-27, 2007;<sup>25</sup>
- vii) Edison, New Jersey, May 24, 2006;<sup>26</sup> and
- viii) Multiple towns in New Jersey, August-September, 2007.<sup>27</sup>

4) Records. The term "records" includes, but is not limited to, all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals, or studies.

### **C. Request for Information:**

Requesters seek the following records:

#### **1) Policies and Procedures**

All guidelines, instructions, memoranda, protocols or training materials issued from January 1, 2004 to the present, setting forth policies or procedures related to operations to identify, locate, or arrest suspected fugitives in the state of New Jersey. These include but are not limited to operations conducted as part of "Operation Return to Sender," "Operation Predator" and "Operation Community Shield."

#### **2) Database Records**

All records related to individuals apprehended during Specified Operations (i) – (xl) and Operations Reported by ICE (i) – (vii), held in the following databases:

##### **a) Fugitive Case Management System ("FCMS");**

Please include data from all FCMS data fields (either as individual records or as a spreadsheet), including but not limited to classification of each apprehended

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<sup>23</sup> See ICE Press Release, "New Jersey fugitive teams arrest 363 in two-month operation," March 1, 2007 (<http://www.ice.gov/pi/news/newsreleases/articles/070301Newark.htm>, accessed October 10, 2007).

<sup>24</sup> See ICE Press Release, "Title ICE arrests 128 immigration violators in statewide enforcement operation: Sex offenders, violent criminal and fugitive aliens among those arrested," April 2, 2007 ([www.ice.gov/pi/news/newsreleases/articles/070402newark.htm](http://www.ice.gov/pi/news/newsreleases/articles/070402newark.htm), accessed October 12, 2007).

<sup>25</sup> See ICE Press Release, "ICE Fugitive Operations Teams Arrest 217 Immigration Violators: 37 Criminal Aliens Apprehended During Statewide Enforcement Operation," May 1, 2007 ([www.ice.gov/pi/news/newsreleases/articles/070501newark.htm](http://www.ice.gov/pi/news/newsreleases/articles/070501newark.htm), accessed October 12, 2007).

<sup>26</sup> See ICE Press Release, "ICE operation arrests 32 fugitives hiding in Edison, New Jersey: Surveillance by ICE offices indicates some fugitives were working together to defy the law," May 26, 2006 ([www.ice.gov/pi/news/newsreleases/articles/060524edison.htm](http://www.ice.gov/pi/news/newsreleases/articles/060524edison.htm), accessed October 12, 2007).

<sup>27</sup> See ICE Press Release, "ICE Partners With Local Officers Nationwide To Arrest Gang Members: More than 1,300 Arrests Nationally; 27 Arrests Made in New Jersey," October 9, 2007 ([www.ice.gov/pi/news/newsreleases/articles/071009newark.htm](http://www.ice.gov/pi/news/newsreleases/articles/071009newark.htm), accessed October 12, 2007).

fugitive, as (1) a fugitive posing a threat to the nation, (2) a fugitive posing a threat to the community, (3) a fugitive with a violent criminal history, (4) a criminal fugitive, or (5) a non-criminal fugitive.<sup>28</sup> Please also include FCMS records related to any Warrants of Deportation/Removal, or search warrants relied upon in apprehending each individual.

b) National Crime Information Center (NCIC); and

Please include data from all NCIC data fields, including but not limited to records related to any Warrants of Deportation/Removal, or search warrants relied upon in apprehending each individual.

c) Deportable Alien Control System.

3) FOT Apprehension Goal

The DRO Memorandum, entitled "Fugitive Operations Case Priority and Annual Goals," January 31, 2006, including any subsequent versions or updates to the memorandum.

4) Fugitive Operations Team Plans

All Fugitive Operations Team ("FOT") plans submitted for approval to the DRO office in Newark or Washington, D.C., or to the National Fugitive Operations Program ("NFOP") in relation to each operation within the Specified Operations and/or the Operations Reported by ICE. Please also provide any documents that reveal whether any of those plans were approved by NFOP.

5) National Fugitive Operations Program Weekly Statistical Reports

All NFOP weekly statistical reports related to the state of New Jersey from January 1, 2004 to the present. *See* OIG Report at 17 ("In its National Fugitive Operations Program weekly statistical report, the office recorded, in separate columns, the total number of apprehended fugitive and non-fugitive aliens.")

6) Records Related to Operations Reported By ICE

Any records revealing the following information for each and every arrest reported in the Operations Reported by ICE (*see* B.3 (i)-(vii)):

- a) the name and date of birth of any individual arrested;
- b) the nationality of any individual arrested;
- c) the location of any arrest, including the address of any private residence entered in the course of apprehending the arrestee; the date and time of attendance; and the number of individuals arrested at the residence;

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<sup>28</sup> *See* Office of Detention and Removal Operations Memorandum, "Fugitive Operations Case Priority and Annual Goals," January 31, 2006.

- d) any information concerning other individuals present at a residence at the time of an arrest;
- e) any information concerning a residence entered in the course of searching for a fugitive, where no arrests were made;<sup>29</sup>
- f) whether consent was given to enter any residence that an ICE agent entered in the course of searching for a fugitive, and by whom consent was given;<sup>30</sup>
- g) whether or not each individual arrested was a fugitive alien, and whether each individual was a criminal fugitive or suspected of posing a threat to the community;
- h) any warrant of deportation/removal, or search warrant relied upon in the course of arresting the individual;
- i) any other document containing information on the arrestee that was relied upon in relation to the arrest, including any document containing a photograph and/or printed information related to the arrestee; and
- j) if a warrant formed the basis for entry onto a premises, whether the individual(s) who were the subject of the warrant were found at the premises.

Such records include the fugitive apprehension report for each and every arrest reported in the Operations Reported by ICE.

#### 7) Records Related to Specified Operations

Any records revealing the following information for each of the Specified Operations (*see* B.2 (i) – (xl)):

- a) the name and date of birth of any individual arrested;
- b) the nationality of any individual arrested;
- c) the location of any arrest, including the address of any private residence entered in the course of apprehending the arrestee; the date and time of attendance; and the number of individuals arrested at the residence;
- d) any information concerning other individuals present at a residence at the time of an arrest;
- e) any information concerning a residence entered in the course of searching for a fugitive, where no arrests were made;<sup>31</sup>
- f) whether consent was given to enter any residence that an ICE agent entered in the course of searching for a fugitive, and by whom consent was given;<sup>32</sup>
- g) whether or not each individual arrested was a fugitive alien, and whether each individual was a criminal fugitive or suspected of posing a threat to the community;

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<sup>29</sup> See 8 C.F.R. 287.8(f)(3) (“Adequate records must be maintained noting the results of every site inspection, **including those where no illegal aliens are located**”).

<sup>30</sup> See 8 C.F.R. 287.8(f)(2) (“When consent to enter [a residence] is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given”).

<sup>31</sup> See 8 C.F.R. 287.8(f)(3) (“Adequate records must be maintained noting the results of every site inspection, **including those where no illegal aliens are located**”).

<sup>32</sup> See 8 C.F.R. 287.8(f)(2) (“When consent to enter [a residence] is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given”).



- h) any warrant of deportation/removal, or search warrant relied upon in the course of arresting the individual; and
- i) if a warrant formed the basis for entry onto a premises, whether the individual(s) who were the subject of the warrant were found at the premises.

Such records include the fugitive apprehension report for each and every arrest reported in the Operations Reported by ICE.

8) Local Law Enforcement

The March 2007 OIG Report states: “. . . many teams have solicited the assistance of local law enforcement officers to participate in fugitive apprehensions.” OIG Report, 26.

Please provide:

- a) records revealing the names of any towns, municipalities, or state departments in New Jersey whose law enforcement officers provided assistance to an FOT or otherwise participated in fugitive apprehensions from January 1, 2004 to the present;
- b) all agreements, including information-sharing agreements, with any state or local government or law enforcement agency in New Jersey, from January 1, 2004 to the present, such as Enterprise Agreements, Memoranda of Understanding, or Interconnection Security Agreements; and
- c) all communications between a member of an FOT in New Jersey and any local or state government employee, agent or law enforcement officer in New Jersey from January 1, 2004 to the present.

**D. Fee Waiver:**

Requesters are entitled to a waiver of all costs “because [the information that requesters seek] is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in [requesters’] commercial interest.” 5 U.S.C. § 552(a)(4)(A)(iii). *See also* 6 C.F.R. § 5.11(k) (Records furnished without charge if the information is in the public interest, and disclosure is not in commercial interest of institution).

The public has an interest in being informed about the manner in which federal immigration agents are enforcing immigration laws. In particular, the public has a strong interest in ensuring that immigration agents are operating within constitutional limitations protecting individuals from unauthorized searches of their homes. The records sought in this request will also further public understanding of the extent to which state or local governments are participating in the enforcement of federal immigration laws. As the list of Specified Operations and Operations Reported by ICE indicates, this type of government activity concretely affects many individuals and groups across the state of New Jersey, and indeed, across the country. However there is almost no information in the public domain (aside from individual anecdotes) about the manner in which

residential searches and arrests are being conducted, and the government's bases for those searches and arrests.

Courts have repeatedly ruled that seeking information for scholarly purposes is consistent with the public interest fee waiver provided by 5 U.S.C. § 552(a)(4)(A)(iii). *See, e.g., Allen v. Federal Bureau of Investigation*, 551 F. Supp. 694, 697 (D.D.C. 1982) (requester was engaged in a program of scholarly research into the work of the United States House Select Committee on Assassinations in its investigation of President Kennedy's assassination); *Irons v. Federal Bureau of Investigation*, 571 F. Supp. 1241 (D. Mass. 1983) (requesters were recognized legal scholars and historians seeking information relating to Smith Act prosecutions of Communist Party leaders). Disclosure of the requested information is in the public interest because the Center plans to disseminate such information through scholarly articles and reports, as well as through its staff speaking at educational events related to immigration.

Requesters have no commercial interest in the matter. The Center will make any information that it receives as a result of this FOIA request available to the public, including the press, at no cost. The Brazilian Voice, a representative of the news media, has no commercial interest in the matter. Disclosure in this case therefore meets the statutory criteria, and a fee waiver would fulfill Congress's legislative intent in amending FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) ("Congress amended FOIA to ensure that it be 'liberally construed in favor of waivers for noncommercial requesters.'" (citation omitted)).

Alternately, the requesters seek a reduction in duplication fees pursuant to 6 C.F.R. § 5.11 (d)(3)(i), because requesters have no commercial interest in the matter. The Department should provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages of duplication. *See* 6 C.F.R. § 5.11 (d)(2). Search fees should not be assessed. *See* 6 C.F.R. § 5.11(d)(1) ("No search fee will be charged for requests by educational institutions, noncommercial scientific institutions, or representatives of the news media").

#### **D. Expedited Process:**

Title 5 U.S.C. §552(a)(6)(E) governs expedited processing of requests for information in cases in which the entity requesting the records demonstrates a compelling need. If the requester is "primarily engaged in disseminating information," urgency to inform the public concerning actual or alleged Federal Government activity constitutes a "compelling need." §552(a)(6)(E)(v)(II).

Department of Homeland Security regulations require that requests be given expedited treatment if they involve an "urgency to inform the public about an actual or alleged federal government activity," if made by a person primarily engaged in disseminating information. 6 C.F.R. §5.5(d).

The Brazilian Voice is a regularly published, widely distributed newspaper that is “primarily engaged in disseminating information” on current events and issues of interest to the Brazilian community in New Jersey, New York, Connecticut, Massachusetts and Pennsylvania. See *Bloomberg, L.P. v. United States Food and Drug Administration*, 500 F.Supp.2d 371 (S.D.N.Y. 2007).

The Center is an entity that is “primarily engaged in disseminating information” because it is “an entity that gathers information of potential interest to a segment of the public.” *National Security Archive v. Dept. of Defense*, 880 F.2s 1381, 1387 (D.C. Cir. 1989). The Center’s primary goal is raising public awareness and protecting and promoting the rights of individuals in the state of New Jersey, particularly the rights of immigrants. Through provision of direct services, scholarly research and work with local communities, the Center’s staff and students gather information on immigrants’ rights issues, and disseminate that information through press releases, opinion pieces in major local newspapers, and through the Center’s web site, as well as by speaking at conferences, panel discussions, townhall meetings and informal sessions with local community groups and advocacy coalitions.

There is a compelling need for the information that requesters are seeking, because there is an urgent need to inform the public about an actual or alleged federal government activity; specifically, ICE “raids” of individuals’ homes in the course of fugitive apprehension operations that are presently continuing throughout the state of New Jersey (and elsewhere). Numerous accounts of immigration enforcement agents entering homes without appropriate warrants have received repeated and widespread media attention throughout New Jersey, as indicated by the wide range of news sources cited in the Specified Operations definition paragraph (see paragraph B.2). These accounts reveal widespread community and local government concern over disruptive, intimidating and, in some instances, potentially illegal tactics employed by immigration agents conducting fugitive apprehension activities in private residences throughout the state. For example, Trenton Councilman Manuel Segura stated that the raids into immigrants’ homes “stripped away all dignity of the people living there; they were treated like dogs.”<sup>33</sup> Nevertheless, there is virtually no information in the public domain that indicates the bases on which and the methods by which ICE agents enter individuals’ homes in the course of fugitive apprehension operations, or the government’s policies and practices concerning the apprehension of fugitives and other individuals in their homes.

Because of ICE agents’ ongoing use of questionable methods for entering private homes in a rapidly escalating number of raids across the state of New Jersey, the situation is a matter of “current exigency.” *Long v. Dept. of Homeland Sec.*, 436 F. Supp. 2d 38, 42 (D.D.C 2006). See range of media articles referenced in paragraph B.2; see also Brian Donohue, “Raids nab nearly twice as many illegal immigrants,” *Star Ledger*, December

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<sup>33</sup> “Palmer makes push for immigrants,” *The Trentonian*, December 23, 2007 ([http://www.zwire.com/site/news.cfm?newsid=13613438&BRD=1697&PAG=461&dept\\_id=44551&rft=6](http://www.zwire.com/site/news.cfm?newsid=13613438&BRD=1697&PAG=461&dept_id=44551&rft=6), accessed October 10, 2007).

5, 2007 (reporting that “federal immigration fugitive teams in New Jersey arrested 2,079 illegal immigrants in the year ending Sept. 30, nearly twice the total of the previous year” ... “reflect[ing] a nationwide trend that has seen deportations skyrocket”).

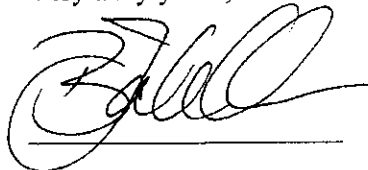
If you deny any part of this request, please cite each specific reason or exemption to FOIA that you think justifies your refusal to release the information, and notify us of appeal procedures available to us under the law. Requesters expect release of all segregable portions of otherwise exempt material. Requesters reserve the right to appeal a decision to withhold information or a denial of fee waivers or expedited processing.

Requesters certify that the above information is “true and correct to the best of the requester[s’] knowledge.” *See* 6 C.F.R § 5.5(d)(3). If you have any questions processing this request, you may contact Bassina Farbenblum at 973.642.8700. Thank you for your consideration of this request.

Please furnish all applicable records, in electronic form, on CD, to:

Bassina Farbenblum  
Seton Hall School of Law Center for Social Justice  
833 McCarter Highway  
Newark, New Jersey 07102

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bassina', written over a horizontal line.

ROBERTO LIMA  
Brazilian Voice  
412 Chesnut St.  
Newark, New Jersey 07105

BASSINA FARBENBLUM  
Seton Hall School of Law Center for Social Justice  
833 McCarter Highway  
Newark, New Jersey 07102



Homeland  
Security

January 4, 2008

Mr. Bassina Farbenblum  
Seton Hall School of Law Center for Social Justice  
833 McCarter Highway  
Newark, NJ 07102

**Re: DHS/OS/PRIV 08-171 Farbenblum request**

Dear Mr. Farbenblum:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), dated December 13, 2007, and to your requests for expedited treatment and a waiver of all assessable FOIA fees. You submitted your request on behalf of the Seton Hall School of Law's Center for Social Justice and the Brazilian Voice newspaper. Your request was received in this office on December 20, 2007. Specifically, you requested the following records:

1. Policies and Procedures. All guidelines, instructions, memoranda, protocols or training materials issued from January 1, 2004 to the present, setting forth policies or procedures related to operations to identify, locate, or arrest suspected fugitives in the state of New Jersey. These include but are not limited to operations conducted as part of "Operation Return to Sender," "Operation Predator" and "Operation Community Shield."
2. Database Records. All records related to individuals apprehended during Specified Operations and Operations Reported by ICE, held in the following databases:
  - (a) Fugitive Case Management System (FCMS), including FCMS records related to any Warrants of Deportation/Removal, or search warrants relied upon in apprehending each individual;
  - (b) National Crime Information Center (NCIC), including but not limited to records related to any Warrants of Deportation/Removal, or search warrants relied upon in apprehending each individual; and
  - (c) Deportable Alien Control System.
3. FOT Apprehension Goal. The DRO Memorandum, entitled "Fugitive Operations Case Priority and Annual Goals," January 31, 2006, including any subsequent versions or updates to the memorandum.
4. Fugitive Operations Team Plans. All Fugitive Operations Team (FOT) plans submitted for approval to the DRO office in Newark or Washington, D.C., or the National Fugitive Operations Program (NFOP) in relation to each operation within the Specified Operations



and/or the Operations Reported by ICE, including any documents that reveal whether any of those plans were approved by NFPO.

5. National Fugitive Operations Program Weekly Statistical Reports. All NFOP weekly statistical reports related to the state of New Jersey from January 1, 2004 to the present.
6. Records Related to Operations Reported by ICE. Any records, including the fugitive apprehension report, revealing the following information for each and every arrest reports in the Operations Reported by ICE:
  - a. the name and date of birth of any individual arrested;
  - b. the nationality of any individual arrested;
  - c. the location of any arrest, including the address of any private residence entered in the course of apprehending the arrestee; the date and time of attendance; and the number of individuals arrested at the residence;
  - d. any information concerning other individuals present at a residence at the time of an arrest;
  - e. any information concerning a residence entered in the course of searching for a fugitive, where no arrests were made;
  - f. whether consent was given to enter any residence that an ICE agent entered in the course of searching for a fugitive, and by whom consent was given;
  - g. whether or not each individual arrested was a fugitive alien, and whether each individual was a criminal fugitive or suspected of posing a threat to the community;
  - h. any warrant of deportation/removal, or search warrant relied upon in the course of arresting the individual;
  - i. any other document containing information on the arrestee that was relied upon in relation to the arrest, including any document containing a photograph and/or printed information related to the arrestee; and
  - j. if a warrant formed the basis for entry onto a premise, whether the individual(s) who were the subject of the warrant were found at the premises.
7. Records Related to Specified Operations. Any record, including the fugitive apprehension report for each and every arrest reported in the Operations Reported by ICE, revealing the following information for each of the Specified Operations:
  - a. the name and date of birth of any individual arrested;
  - b. the nationality of any individual arrested;
  - c. the location of any arrest, including the address of any private residence entered in the course of apprehending the arrestee; the date and time of attendance; and the number of individuals arrested at the residence;
  - d. any information concerning other individuals present at a residence at the time of an arrest;
  - e. any information concerning a residence entered in the course of searching for a fugitive, where no arrests were made;
  - f. whether consent was given to enter any residence that an ICE agent entered in the course of searching for a fugitive, and by whom consent was given;

- g. whether or not each individual arrested was a fugitive alien, and whether each individual was a criminal fugitive or suspected of posing a threat to the community;
- h. any warrant of deportation/removal, or search warrant relied upon in the course of arresting the individual; and
- i. if a warrant formed the basis for entry onto a premise, whether the individual(s) who were the subject of the warrant were found at the premises.

8. Local Law Enforcement. Please provide:

- a. records revealing the names of any towns, municipalities, or state departments in New Jersey whose law enforcement officers provided assistance to an FOT or otherwise participated in fugitive apprehensions from January 1, 2004 to the present;
- b. all agreements, including information-sharing agreements, with any state or local government or law enforcement agency in New Jersey, from January 1, 2004 to the present, such as Enterprise Agreement, Memoranda of Understanding, or Interconnection Security Agreements; and
- c. all communications between a member of an FOT in New Jersey and any local or state government employee, agent or law enforcement officer in New Jersey from January 1, 2004 to the present.

I note that you filed your request concurrently with several DHS components. However, upon initial review of your request, I have determined that the information you are seeking may also be under the purview of the DHS Office of the Inspector General (OIG), the DHS Office of the General Counsel, and the DHS Office of Policy (PLCY). Therefore, I am referring your request to the following DHS components for processing and direct response to you:

- I am referring your request to the FOIA Officer for OIG, Nikki Gramian, for processing and direct response to you. You may contact that office in writing at U.S. Department of Homeland Security, Office of the Inspector General, 245 Murray Drive, Bldg. 410, Mail Stop - 2600, Washington, D.C. 20528-0001 or via telephone at 202-254-4001.
- I am referring your request to the DHS Office of the General Counsel. You may contact that office by writing to: Associate General Counsel for General Law, U.S. Department of Homeland Security, Washington, DC 20528.
- Lastly, I am referring your request to the Acting FOIA Officer for the Office of Policy (PLCY), Tiffany Kebodeaux. You may reach that office at U.S. Department of Homeland Security, Office of Policy, 245 Murray Lane, SW, Washington, DC 20528.

I have also determined that your request for expedited processing should be denied. Under the DHS FOIA regulation, expedited processing of a FOIA request is warranted if the request involves "circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," 6 C.F.R. § 5.5(d)(1)(i), or "an urgency to inform the public about an actual or alleged federal government activity, if made by a person primarily engaged in disseminating information," 6 C.F.R. § 5.5(d)(1)(ii). Requesters that seek expedited processing must submit a statement explaining in detail the basis for the request, and that statement must be certified by the requester to be true and correct. 6 C.F.R. § 5.5(d)(3).

As it relates to your request for expedited treatment, your request is denied. Clearly, the lack of expedited treatment in this case will not pose an imminent threat to the life or physical safety of an individual. The sought information is retrospective and would have no bearing on the immediate or resultant future situations. In addition, you have not shown that the Center for Social Justice is primarily engaged in the dissemination of information to the public. While the Center for Social Justice may have provided information to the media on occasion, you have not shown that the Center is primarily engaged in such efforts. Furthermore, while the Brazilian Voice may be primarily engaged in the disseminating of information, you have not detailed with specificity why you feel there is an urgency to inform the public about past DHS actions. This urgency would need to exceed the public's right to know about government activity generally. Nor did you offer any supporting evidence of an interest of the public that is any greater than the public's general interest in past fugitive operations. One indicator of public interest on any topic can be gauged by the number of requests we receive for information. To date, your request is the only recent request for information on ICE operations. Another gauge of public interest is news coverage, and a preliminary search of the internet does not indicate that there is substantial current news interest concerning this topic. In this regard, I note that the majority of the articles you cited appeared in the press in 2005, 2006 and early 2007.

As it relates to your fee waiver request, your request will be held in abeyance pending the quantification of responsive records. The DHS FOIA Regulations, 6 CFR § 5.11(k)(2), set forth six factors to examine in determining whether the applicable legal standard for a fee waiver has been met: (1) Whether the subject of the requested records concerns "the operations or activities of the government;" (2) Whether the disclosure is "likely to contribute" to an understanding of government operations or activities; (3) Whether disclosure of the requested information will contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons; (4) Whether the contribution to public understanding of government operations or activities will be "significant;" (5) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and (6) Whether the magnitude of any identified commercial interest to the requestor is sufficiently large in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requestor. If any responsive records are located, we will consider these factors in our evaluation of your request for a fee waiver.

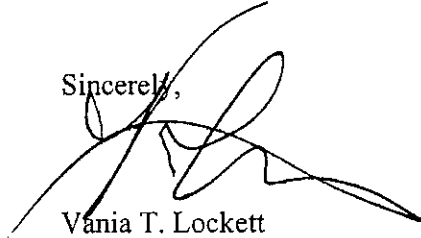
In the event that your fee waiver is denied, you will be charged for records in accordance with the DHS Interim FOIA regulations as they apply to educational institutions. As an educational institution requestor you will be charged 10-cents a page for duplication, although the first 100 pages are free. You will be promptly notified once a determination is made regarding your fee waiver request.

You have the right to appeal the determination to deny you expedited treatment. Should you wish to do so, you must **send your appeal within 60 days of the date of this letter to:** Associate General Counsel (General Law), U.S. Department of Homeland Security, Washington, D.C. 20528, following the procedures outlined in Subpart A, Section 5.9, of the DHS Regulations. Your envelope and letter should be marked "Freedom of Information Act Appeal."

The implementing Department regulations establish the criteria under which the FOIA is administered. Copies of the FOIA and regulations are available at [www.DHS.gov](http://www.DHS.gov).

Your request has been assigned reference number **DHS/OS/PRIV 08-171 Farbenblum request**. Please refer to this identifier in any future correspondence. If you have any questions, or would like to discuss this matter, please feel free to contact this office at 1- 866-431-0486 or 703-235-0790.

Sincerely,

A handwritten signature in black ink, appearing to read 'V. Lockett', is written over the word 'Sincerely,'.

Vania T. Lockett  
Associate Director, Disclosure & FOIA Operations